

CALIFORNIA COASTAL COMMISSION

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APPEAL STAFF REPORT – DE NOVO REVIEW

Application numberA-2-SMC-01-032, Da Rosa Residence

Applicant.....Thomas Da Rosa

Local GovernmentSan Mateo County

Local DecisionApproved with Conditions October 30, 2001

Substantial IssueThe Commission found that the appeal of the local government action on this development raised a substantial issue on January 9, 2002.

Project location194 Coronado Avenue, Miramar, San Mateo County; APN 048-013-570.

Project description.....Construction of a 36-foot-high, 3-story 1,800-square-foot, single-family residence, an attached 440-square-foot garage, tandem parking arrangement, and three test wells for domestic use.

AppellantsCommittee for Green Foothills, Barbara K. Mauz, Robert La Mar, Steve Marzano, Ric Lohman, and Larry Kay.

File documents.....*Draft Montara-Moss Beach Water Well EIR*, prepared for the County of San Mateo, Department of Environmental Management, Planning and Development Division (Kleinfelder, INC, 1989a); *Da Rosa Property Biological Resources Assessment, Miramar, California, De Novo Review of A-2-SMC-01-032* (LSA Associates, Inc., December 22, 2003); *Preliminary Hydrogeological Evaluation, Proposed New Production Well, APN 048-013-570, Coronado Ave., San Mateo County, California* (Geoconsultants, Inc., June 11, 2002).

Staff recommendation ...Approval

Summary: The applicant proposes to construct a 2,870 sq. ft., 3-story, 36-foot-high single-family residence consisting of 1,800 sq. ft. of livable space, a 440 sq. ft. garage, 630 sq. ft. of uninhabitable space on the ground floor, and a well on a nonconforming 4,400 square foot lot. San Mateo County approved the project on October 30, 2001. This approval was appealed to the Commission and the Commission found that the appeals raised substantial issues regarding the conformance of the approved development with the sensitive habitat and groundwater resource policies of the San Mateo LCP. In order to approve a coastal development permit through a *de novo* review of the project, the Commission



California Coastal Commission
November 2004 Meeting in San Pedro

Staff: S. Craig Approved by:

required a site-specific biological resources assessment and wetland delineation conducted in accordance with the LCP definition of wetlands, as well as an analysis of the impacts of the approved well on water-dependent environmentally sensitive habitat areas and priority land uses.

The applicant submitted a wetland delineation, which determined that wetlands did not exist on the subject property. The Commission's staff biologist determined, however, that a wetland area was located on an adjacent property. Since the widths of the subject and adjacent properties are only 40 feet, even a reduced minimum 50-foot buffer zone to protect the wetland on the adjacent property would extend onto the subject Da Rosa property, inconsistent with the policies of the certified LCP. In view of the other residential uses in the immediate vicinity of this property and the fact that the uses allowed in wetland buffers would not provide the applicant with an economically viable use of his property, the full implementation of LCP policies to prevent residential use of the subject property is not consistent with Section 30010 of the Coastal Act. The small size and narrow width of this nonconforming property greatly limit the ability to provide meaningful mitigation measures to protect the wetlands on the adjacent property. The proposed project does include a 10-foot side-yard setback from the wetlands on the adjacent property, which is a significant setback given that the subject property is only 40 feet in width. To further protect the adjacent wetland, staff recommends a condition to prevent the planting of nonnative invasive plants within the 10-foot side-yard setback.

The applicant submitted a hydrogeologic study that demonstrated that the project site and adjacent wetlands are located in a separate hydrogeologic unit from the proposed well, and are supported by surface hydrology which would be unaffected by groundwater withdrawal. Thus, a hydrogeologic study to determine the safe yield is unnecessary to establish that the proposed well would not adversely impact water-dependent sensitive resources. Additionally, the project is conditioned to require that the applicant connect to the public water system when additional public water becomes available, and to discontinue the use of the well at that time. The project is also conditioned to require the implementation of best management practices during construction, as well as submission of a storm water pollution prevention plan.

As conditioned, staff recommends approval.

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I. Project Procedural History

San Mateo County has a certified LCP, and the proposed project was reviewed in a local coastal permit process before the County took action on it on October 30, 2001. The County's approval was then appealed to the Commission by the Committee for Green Foothills, Barbara K. Mauz, Robert La Mar, Steve Marzano, Ric Lohman, and Larry Kay. On January 9, 2002, the Commission found that the appeals of the development approved by San Mateo County raised substantial issues regarding the conformance of the approved development with the sensitive habitat and groundwater resource policies of the San Mateo LCP. In order to approve a coastal development permit through a *de novo* review of the project, the Commission required a site-specific biological resources assessment and wetland delineation conducted in accordance with the LCP definition of wetlands, as well as an analysis of the impacts of the approved well to water-dependent environmentally sensitive habitat areas and priority land uses.

II. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-2-SMC-01-032 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the



following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the grounds that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

III. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.



B. Special Conditions

1. Conditions Imposed By Local Government.

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

2. Landscaping.

The planting of invasive plant species, as identified on the California Exotic Pest Plant Council's "Exotic Pest Plants of Greatest Ecological Concern in California" list, is prohibited.

3. Public Water.

The property owner shall apply for and shall obtain service from the local public water company when it has availability of an adequate public water supply for the project, at which time use of the on-site well shall be discontinued.

4. Implementation of Best Management Practices During Construction.

Appropriate best management practices shall be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook. These measures shall include: 1) limiting the extent of land disturbance to the minimum amount necessary to construct the project; 2) designating areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; 3) providing for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in any runoff from construction, staging, and storage/stockpile areas; 4) incorporating good construction housekeeping measures, including the use of dry cleanup measures whenever possible; 5) collecting and filtering cleanup water when dry cleanup methods are not feasible; 6) cleaning and refueling construction equipment at designated offsite maintenance areas, and; 7) the immediate clean-up of any leaks or spills. The construction areas shall be delineated with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

5. Post Construction Stormwater Pollution Prevention Plan.

A. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Post-Construction Stormwater Pollution Prevention Plan showing final drainage and runoff control measures. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of storm water leaving the developed site after completion of



construction. The Post-Construction Polluted Runoff Prevention Plan shall include, at a minimum, the BMPs specified below:

- a. A pop-up drainage emitter system, or similar device shall be installed to conduct roof runoff from roof gutter systems and downspouts away from structural foundations and to disperse runoff in lawn or landscaped areas. Emitters shall be sized according to downspout and watershed (roof area) size. Pipe riser height shall be designed to create head sufficient enough to lift pop-up. Outfall and sheetflow shall be designed to disperse runoff onto vegetated areas or suitable landscaped.
 - b. Where possible, runoff from the driveway should be directed to natural drainage systems that allow for filtration.
 - c. Native or noninvasive drought-tolerant adapted vegetation shall be selected, in order to minimize the need for fertilizer, pesticides/herbicides, and excessive irrigation.
 - d. The final site plan shall show the finished grades and the locations of the drainage improvements, including downspouts and, where necessary, splashguards.
- B.** The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

The proposed development is located on a substandard 4,400-square-foot lot located on Coronado Avenue, in the unincorporated Miramar area of San Mateo County. The property is zoned R-1/S-94 (Single Family Residential/10,000 square-foot minimum parcel size, 50-foot minimum parcel width), DR (Design Review), and CD (Coastal Development); the Combining District designation was "S-9" at the time of application, which requires a 50 ft. width and 10,000 sq. ft. lot area. The site is located in an existing residential neighborhood (Exhibits 1 and 2). The property consists of Lot 20, Block 7, of the Shore Acres Subdivision. The property is located on Coronado Avenue, southwest of State Route 1 (Cabrillo Highway) and the raised bed of the former Ocean Shore Railroad right-of-way, fronting on Coronado Avenue at the north in the unincorporated community of Miramar. The Miramar area of unincorporated San Mateo County is located on a coastal bluff west of Half Moon Bay Airport. The property lies on the narrow, relatively flat and level coastal terrace between the coastal hills and the beach at Half Moon Bay. The ocean cliff, riprap seawall, and beach are approximately 164 ft. southwest



of the project site on the far side of Mirada Rd.; perennial Arroyo de en Medio Creek lies approximately 574 ft. to the southeast. Properties to the west are developed with single-family residences and commercial recreation uses. A single-family residence is being constructed on an adjacent property (APN 048-013-580) west of the Da Rosa site. The property directly to the east of the proposed project site is vacant. Many of the surrounding properties have been merged to form building sites that are more conforming to the S-9 standards but still do not meet the 10,000 sq. ft. minimum lot size. The property is relatively flat.

The proposed development consists of a 2,870 sq. ft., 3-story, 36-foot-high single-family residence consisting of 1,800 sq. ft. of livable space, a 440 sq. ft. garage, and 630 sq. ft. of uninhabitable space on the ground floor. The development is on a nonconforming lot (size 4,400 sq. ft.) with a minimum lot size of 10,000 sq. ft. The residence will have four bedrooms and 2.5 bathrooms; the permit includes provisions for three test wells leading to construction of a domestic well in the north corner of the parcel (Exhibit 3). As a condition of its approval, the County required that in the event that a public water supply becomes available, the applicant shall be required to switch to this alternative. The County also required the applicant to obtain a well permit and construct a well in accordance with the quality and quantity standards of the Environmental Health Division prior to submitting any building permit application.

B. Coastal Issues

1. Wetlands

a. Applicable Policies

San Mateo County LCP Policy 7.3 provides for the protection of sensitive habitat areas, including wetlands, and states:

(a) Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas; (b) Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

LCP Policy 7.14 (in part) defines “wetland” as:

...an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground.

LCP Policy 7.16 describes permitted uses in wetlands, which do not include residential development:

Within wetlands, permit only the following uses: (1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow



chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging manmade reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

LCP Policy 7.17 describes performance standards in wetlands, in relevant part:

Require that development permitted in wetlands minimize adverse impacts during and after construction...

LCP Policy 7.18 establishes buffer zones for wetlands and states:

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem. [Emphasis added.]

b. Commission Action on Appeal

The appellants contended that the County-approved development was inconsistent with LCP policies concerning protection of wetlands and other environmentally sensitive habitat areas. Commission staff determined that no site-specific surveys of biological resources regarding the red-legged frog and the San Francisco garter snake had been performed prior to the County's approval. In addition, no wetland delineation was conducted for the project site as part of the County's review, although an archaeological report for the project site reported observations of standing water and wetland plants on the project site. The Commission found that the project raised a substantial issue due to the lack of a wetland delineation and biological survey for the project site, and required that a site-specific biological resources assessment and a wetland delineation, conducted in accordance with the LCP definition of wetlands, be carried out prior to *de novo* review of the project.

c. Interim History Since Substantial Issue Determination

On March 26, 2003, the applicant submitted a Biological Resources Assessment, which showed that an approximately 30-square-foot wetland area, based on the LCP definition of wetlands, was located at the northwest corner of the subject property. In a letter dated May 2, 2003, Commission staff discussed the presence of this wetland and the need for a sufficient wetland buffer on the property, as defined by the



LCP, and concluded that LCP policies 7.14, 7.18, and 7.19 regarding wetlands could be interpreted to preclude approval of the proposed residential development on the site. Regarding the establishment of buffer zones surrounding a wetland, LCP policy 7.18 requires a wetland buffer setback of 100 feet; the setback may be reduced to no less than 50 feet if no alternative development or design is possible, *and* if the adequacy of the reduced setback is conclusively demonstrated to the County and the State Department of Fish & Game. Due to the small size of the Da Rosa property (4,400 sq. ft.), even if the buffer could be reduced to 50 feet consistent with LCP Policy 7.18, approximately half of the property would fall within the area required by the buffer. Maintaining even a 50-foot buffer would reduce the buildable portion of the lot to approximately 2,000 sq. ft. Any residential development would also have to include a driveway placed within the wetland buffer, inconsistent with LCP Policy 7.19.

On February 17, 2004 the applicant submitted a revised wetland delineation (Exhibit 4) for the subject property. The revised wetland delineation concluded that the 30-square foot wetland area located in the northwest corner of the Da Rosa property was subject to transitory ponding due to recent improvements to Coronado Street that reduced the ability of storm water to drain from the Da Rosa parcel and an adjacent parcel onto the roadway. The revised report concluded that this area did not display evidence of hydric soils or wetland plant cover and thus does not meet LCP wetland criteria. The Commission's staff biologist reviewed the revised wetland delineation report and agreed with the conclusion that this 30-square foot area did not constitute a wetland. This report also determined that there is no suitable habitat on or immediately adjacent to the subject parcel for the San Francisco garter snake, California red-legged frog, or other state or federally listed species.

On April 1, 2004, Commission staff viewed the Da Rosa property from the adjacent road and photographed and observed areas of standing water in close proximity to the subject property. The Commission's staff biologist reviewed the photographs of this area and concluded that the presence of standing water and obligate wetland plants demonstrated that this area was a wetland, as defined by the LCP. The Commission staff biologist contacted the consulting biologist, who informed him that this wetland area was located on the adjacent Process Research property (APN 048-013-22, Exhibit 2), which at that time was subject to a foreclosure judgment. Since the widths of the subject and adjacent lots are only 40 feet, the buffer zone for the wetland on the adjacent property would extend onto the Da Rosa lot, inconsistent with the wetland buffer provisions of the certified LCP. Commission staff requested that a wetland delineation be done of the adjacent Process Research lot. The applicant did not agree to provide this wetland delineation.

Commission staff contacted the applicant's representative to discuss the possibility of purchasing the vacant property adjacent to the Da Rosa site with the intent of merging these properties to provide a larger, more conforming parcel and to ensure compliance with San Mateo County LCP Zoning Regulation Section 6133.3b(3) which requires that "all opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible." A larger parcel potentially would provide more flexibility regarding the siting of the house with respect to necessary wetland setback buffers. In order to make the findings required by this LCP provision, Commission staff requested information from the applicant regarding the potential purchase of the adjacent property in order to increase the size of the



nonconforming parcel. Regarding an adjacent property to the west (APN 048-013-580, Exhibit 2), the County granted a CDP to David Hodge for development of a single-family home on this property, and in November 2003 the Commission determined that an appeal of the County's CDP approval for this property raised no substantial issue concerning the conformance of the approved development with the certified LCP. A home is now under construction on the Hodge property. Regarding APN 048-013-290, which is located adjacent to the northern property boundary of the Da Rosa parcel, Michael Edward Foley currently owns this property and has indicated that he is not interested in selling the property. The vacant Process Research property (APN 048-013-220, Exhibit 2) is located on the eastern side of the lot owned by Mr. Da Rosa. The Process Research property was the subject of foreclosure proceedings. In previous phone conversations with the applicant's representative, he had stated that Mr. Da Rosa intended to bid on this property, but expressed concern about the likelihood of wetlands being located on this adjacent lot. Recently, however, the owner of the property subject to foreclosure paid off the delinquent assessments on the property. The owner of this property has also indicated that the property is not for sale.

Commission staff visited the Da Rosa site in October 2004. Construction is underway at the adjacent Hodge property and the Da Rosa property is being used as a storage area for construction equipment and supplies. In addition, the Process Research parcel (previously subject to foreclosure), which also contains wetlands, has been filled with crushed stone.¹

The evidence in the record, i.e. photographs and staff observations of obligate wetland plants and standing water, demonstrates that wetlands existed on the adjacent Process Research property. Although these wetlands have been disturbed recently, for purposes of determining whether a coastal development permit should be granted, it is appropriate to analyze the project as if the wetlands remained intact. As noted above, the wetland buffer requirement of the LCP could not be met with respect to the proposed development on the Da Rosa parcel. In considering previous development applications, the Commission has agreed that policies of the Coastal Act and LCPs should not be applied in a manner that will result in the taking of private property for public use in violation of the State and Federal Constitutions. Consistent with court decisions interpreting these constitutional prohibitions, the Commission has determined that the relevant inquiry when considering applications for development that raise taking issues is whether implementation of these policies will deny a property owner all economically viable use of his or her land. In reviewing the economic viability issue, the Commission must also consider the property owner's legitimate investment-backed expectations.

d. Implementing Sections 30010 and 30233 of the Coastal Act

As described above, the record before the Commission evidences the presence of wetlands on the adjacent Process Research property. The proposed development on the Da Rosa property includes a 1,800 square foot single-family residence, an attached 440-square foot garage and associated driveway, and associated infrastructure improvements on a 4,400 square foot site. As noted above, maintaining

¹ Commission staff will separately investigate whether development on the Da Rosa property and the Process Research property constitute violations of the San Mateo County LCP and are subject to enforcement proceedings under the Coastal Act.



even a minimum 50-foot buffer would reduce the buildable portion of the property to approximately 2,000 sq. ft. Any residential development would also have to include a driveway placed within the wetland buffer. In addition, other aspects of the project would need to be located within the wetland buffer zone with resultant disruptions from residential development and subsequent use of the site, such as installation of a storm drainage system, utility trenching, exterior lighting and, over the long run, ordinary residential activities on the premises such as allowing dogs or other activity in the habitat area. None of the development activity described is dependent on a location within the sensitive resource area. Therefore, the proposed development in the wetland buffer cannot be found consistent with San Mateo County LCP sensitive habitat policy 7.18; thus, the project should be denied.

The sensitive habitat policies of the San Mateo County LCP, however, must be applied in the context of Coastal Act Section 30010, which provides that the policies of Local Coastal Programs "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation." Thus, if strict construction of the restrictions in San Mateo County LCP Policy 7.18 would cause a taking of property, this policy must not be so applied and instead must be implemented in a manner that will avoid this result.

Recent court decisions demonstrate that to answer the question whether implementation of a given regulation to a specific project will cause a taking requires an ad hoc factual inquiry into several factors. Specifically, the courts have consistently indicated that this inquiry must include consideration of the economic impact that application of a regulation would have on the property. A land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S. Ct. 2886; also see *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495, citing *Agins v. Tiburon* (1980) 447 U.S. 255, 260.) Another factor that must be considered is the extent to which a regulation or regulatory decision "interferes with reasonable investment backed expectations." (*Keystone Bituminous Coal Assn. v. DeBenedictis*, supra, 480 U.S. 470, 495, citing *Kaiser Aetna v. United States* (1979) 444 U.S. 164, 175.)

In addition, in order to avoid allegations of a taking, certain types of mitigation measures, such as exactions requiring the dedication of a fee interest in property, must be "roughly proportional" to the impact remediated. (*Dolan v. City of Tigard* (1994) 114 S. Ct. 2309.) Other factors that may be reviewed in conducting a takings analysis include whether the land use regulation substantially advances a legitimate state interest. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825.) This is not a significant limitation in analyzing this permit application because the state's interest in protecting environmentally sensitive habitats is well recognized.

Finally, it is necessary to consider whether the property proposed for development by the applicant is subject to existing limitations on the owner's title, such as prescriptive rights, that might preclude the applied-for use. It is also necessary to ensure that the proposed use would not constitute a nuisance. The question as to whether any portion of the development is subject to prescriptive rights does not apply in this case. Furthermore, development of the parcel with a single-family residence in the configuration proposed by the applicant would not constitute a nuisance.



Thus, the Commission interprets Section 30010, together with the recent court decisions, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act or LCP provision would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, unless the proposed project would constitute a public nuisance under state law, Policy 7.18 of the certified LCP cannot be read to deny all economically beneficial or productive use of land because this section of the certified LCP cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

The applicant submitted financial information to demonstrate a sufficient real property interest in the subject property to allow some development. Staff has determined that the applicant bought the parcel in 1999, for which fair market value was paid. During the period when the applicant purchased the parcel, this parcel and other parcels in the Shore Acres subdivision were zoned for single-family residential use. Thus, in the year that the parcel was purchased, the applicant could have legitimately assumed that development of a single-family home on this lot was a reasonable expectation. Continued residential development on similar lots within the Shore Acres subdivision over the intervening years lends further credence to that expectation. Therefore, in view of the other residential uses in the immediate vicinity of this privately held parcel, the Commission finds that the proposed residential use is a reasonable economic use, and also that the uses allowed by San Mateo County LCP Policy 7.16 would not provide an economically viable use.

In view of the findings that (1) none of the uses provided for in San Mateo County LCP Policy 7.16 would provide an economic use, (2) residential use of the property would provide an economic use and (3) the applicant had a reasonable investment-backed expectation that such use would be allowed on the property, the Commission further finds that denial of a residential use, based on the inconsistency of this use with San Mateo County LCP policy 7.18, could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that full implementation of LCP policy 7.18 to prevent residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of LCPs, including San Mateo County LCP policy 7.18, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Instead, the Commission is only directed to avoid construing these applicable LCP policies in a way that would take private property for public use. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the LCP.

In regard to how the development can be configured to further minimize impacts to wetlands, the Commission must determine the essential and non-essential components of the proposed single-family



residential use. The greater the size of the house and the greater the number and size of accessory components allowed as part of the residential development, the greater the size of the area of disturbance to the adjacent wetlands. Two examples of where this factor was a major determinant in the Commission's consideration of how to condition an approval of a development to minimize impacts on ESHA and assure that the development would be in the greatest conformity with coastal development policies and standards and avoid a denial that would result in an uncompensated taking of property can be found in the Commission's past actions on the Burdick (CDP No. 1-93-038) and Feiner (CDP No. 1-95-054) projects. In both of these cases, the Commission considered whether permit conditions to reduce the size of certain project components in the interest of minimizing the amount of pygmy forest impacted by structural improvements would be an appropriate measure in the interest of striving for the greatest level of conformity with the Coastal Act's ESHA protection policies.

At the time that the Burdick project was considered by the Commission in September of 1994, the Mendocino County staff reviewed its building permits to determine the average size of houses approved. The report determined that the average size of houses approved in the Burdick project vicinity was approximately 1,700 square feet, and the average size of comparable combined garage/storage structures to be approximately 700 square feet. The Commission granted a coastal development permit to Burdick to allow construction of a 1,888-square-foot residence, a 528-square-foot attached garage, and a 48-square-foot storage shed.

The more recent amendment to the Feiner permit proposed a manufactured home that was to encompass 1,352 square feet with a detached garage of 672 square feet and a 520-square-foot deck. The Commission found in that instance that because the proposed house and garage would be both within the range of existing residences in the project vicinity, and within the range of the Commission's previous approval of residential development in the pygmy forest area at the Burdick property, the proposed residential development provided that property owner with an economically viable use.

The proposed project includes a modest-sized house (1,800 square feet of living space) and a 440 square foot garage on a small, narrow, severely constrained 40-x-110-foot lot. Reducing the size of the proposed Da Rosa residence to reduce the conflict with LCP Policy 7.18 (which requires a minimum 50-foot wetlands buffer) could only be accomplished by reducing the footprint, but not the height, of the proposed house. In this case, however, the proposed footprint of 1,216 square feet on a 4,400 square foot lot is already minimal. In addition, the proposed house is tall and narrow, similar to other single-family dwellings in the area, and the square footage of the proposed house is in line with other existing residential development in the area. Also, the proposed project includes 10-foot side yard setbacks, which limit the width of the house to 20 feet.

In general, when a project must be approved to avoid a taking, the project will still include implementation of mitigation measures necessary to minimize the impacts of development on sensitive habitats, such as wetlands. In this case, however, the Commission is not requiring additional wetland mitigation measures because: 1) the small size and narrow width of this nonconforming property, which is surrounded by other residential development, greatly limits the ability to require meaningful mitigation measures to protect the adjacent wetlands, and; 2) the project includes a 10-foot side-yard



setback from the wetlands on the adjacent Process Research property, which is a significant setback given that the subject property is only 40 feet in width. The Commission also notes that the proposed 10-foot side-yard setback meets the minimum side-yard setback otherwise required by the certified LCP for this nonconforming property.

Consistent with the required minimum 10-foot side-yard setback, future development, such as additions to the proposed residence, would be prohibited. Allowable uses in the setback, if properly undertaken, would be protective of the adjacent wetland habitat. Fencing, which is an allowable use in the setback, would be beneficial to habitat protection because it would limit people and pets from entering the wetland on the adjacent Process Research property. Landscaping in the setback/buffer area would also improve habitat values by providing screening, filtering of runoff, etc., as long as the landscaping did not include nonnative invasive plants. Nonnative invasive plants invade native habitat areas and vastly alter the ecological landscape by out-competing and excluding native plants and animals; altering nutrient cycles, hydrology, and wildfire frequencies, and hybridizing. Rare species are particularly vulnerable to the changes brought about by nonnative invaders. The most effective and efficient way to deal with weedy species is to prevent invasions. Preventing invasion is of greater conservation benefit in the long run than the far more costly and difficult efforts to control a widespread pest species. To ensure that the buffer area is not landscaped with nonnative, invasive plants, Special Condition #2 of this permit prohibits the planting of any invasive plant species that is identified on the California Exotic Pest Plant Council's "Exotic Pest Plants of Greatest Ecological Concern in California" list. The Commission finds that the special condition attached to the permit will minimize the disturbance of the adjacent wetland and will thus minimize significant adverse impacts to the wetland while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.

2. Safe Yield Test

a. Applicable Policy

LUP Policy 2.32 regarding groundwater supplies states, in relevant part:

Require, if new or increased well production is proposed to increase supply, that: (c) The amount pumped be limited to a safe yield factor which will not impact water dependent sensitive habitats, riparian habitats and marshes. (d) Base the safe yield and pumping restriction on studies conducted by a person agreed upon by the County and the applicant which shall: (1) prior to the granting of the permit, examine the geologic and hydrologic conditions of the site to determine a preliminary safe yield which will not adversely affect a water dependent sensitive habitat; and (2) during the first year, monitor the impact of the well on groundwater and surface water levels and quality and plant species and animals of water dependent sensitive habitats to determine if the preliminary safe yields adequately protect the sensitive habitats and what measures should be taken if and when adverse effects occur.

b. Commission Action on Appeal



The appellants contended that the County-approved development was inconsistent with LCP policy 2.32(d) because neither the County nor the applicant examined the geologic or hydrologic conditions of the site to determine the safe yield for the domestic well. Safe yield is the amount of water that can be withdrawn without significantly adversely impacting water dependent sensitive habitats. Because a significant question remained regarding whether a safe yield test was required for the approved development, the Commission found that the appeal raised a substantial issue regarding the conformity of the approved project with LCP Policy 2.32(d).

c. Analysis

LUP Policy 2.32(c) requires that if new or increased well production is proposed to increase water supply, the amount of water pumped from the well must be limited to a safe yield factor which will not impact water-dependent sensitive habitats, riparian habitats and marshes. LUP Policy 2.32(d) requires that the safe yield and pumping restrictions be based on studies that examine the geologic and hydrologic conditions of the site to determine a preliminary safe yield that will not adversely affect water-dependent sensitive habitats. LUP Policy 2.32(d) further requires that during the first year the applicant monitor the impact of the well on groundwater and surface water levels and quality and plant species and animals of water dependent sensitive habitats to determine if the preliminary safe yield adequately protects the sensitive habitats and what measures should be taken if adverse effects occur.

The applicant submitted a hydrogeological evaluation for the proposed new production well (Exhibit 5). Based on a review of available hydrogeological literature in the vicinity of the subject property, along with an on-site field reconnaissance, the report concluded that the construction of a domestic well on the Da Rosa property would pose no significant adverse effects on the neighboring area. In addition, the County's Environmental Health Division evaluated the well site for potential saltwater intrusion and concluded that no evidence of saltwater intrusion was present on the site (Exhibit 6). These evaluations, however, are not equivalent to a safe yield test.

However, according to the hydrogeological report, the Da Rosa property is underlain by alluvial fan deposits consisting of fine-grained unconsolidated surficial sands and silts. These deposits rarely exceed 40 feet in depth and much of this material is found above the ground-water table and therefore is not generally considered to be a viable groundwater source. Marine terrace deposits, consisting of poorly consolidated to slightly indurated sands and gravels, underlie the alluvial fans. The base of these sediments lies 70 to 80 feet below the surface in this area. In general, these terrace deposits are considered to be the primary aquifer in this area. Thus, the project site and any adjacent wetlands are located in a separate hydrogeologic unit from the proposed well, and are supported by surface hydrology which would be unaffected by groundwater withdrawal. Thus, a hydrogeologic study to determine the safe yield with respect to potential impacts on water dependent sensitive habitats, riparian habitats and marshes is unnecessary to determine that the proposed well would not adversely impact water dependent sensitive resources. In addition, consistent with the conditions previously imposed by the County, Special Condition #3 requires the applicant to connect to the local public water supply when public water becomes available. Therefore, as conditioned, the Commission finds that the proposed project is consistent with LUP Policy 2.32.



3. Water Quality

San Mateo County LUP policy 7.13 requires provisions to prevent runoff and sedimentation from exceeding pre-development levels. Due to increased runoff, water quality can be adversely affected by an increase in paving surfaces. The proposed project is located within several hundred feet of the Monterey Bay National Marine Sanctuary. Special Condition #4 requires appropriate best management practices to protect water quality during construction. Special Condition #5 requires the installation of post-construction storm water pollution prevention measures designed to reduce runoff and protect the quality of coastal waters. With these conditions, the project is consistent with San Mateo County LUP policy 7.13.

4. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding must be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The environmental review of the project conducted by Commission staff involved the evaluation of potential impacts to relevant coastal resource issues, including environmentally sensitive wetland habitats and groundwater impacts. This analysis is reflected in the findings that are incorporated into this CEQA finding as if set forth in full. This staff report responds to all public comments that have been received as of the date of this staff report. Mitigation measures are incorporated as conditions of this approval. Accordingly, as so conditioned, the Commission finds that the proposed project is consistent with CEQA, as there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

